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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Implementation of the Local                    )  
Competition Provisions in                    )  
the Telecommunications Act of 1996 :       CC Docket No. 96-98

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## **SUMMARY**

New Section 251 of the Communications Act sets forth the interconnection obligations of all telecommunications carriers, including new and incumbent local exchange carriers ("LECs"). The Commission is required to establish regulations implementing Section 251, but those regulations must not intrude on the critical roles the Act assigns to private negotiation and to state regulators. Thus, in formulating rules on such matters as technical unbundling and pricing, USTA recommends that the Commission, at most, establish only broad guidelines and minimum requirements to guide private parties and state commissions.

As the Commission implements Section 251, it should recognize, first, that a fundamental policy goal of the 1996 Act, and specifically of Section 251, is to promote facilities-based competition by providing the means for new entrants to interconnect their competing local exchange networks with those of new and incumbent LECs. Section 251's interconnection and unbundled access provisions are not mandated replacements for the Commission's access charge regime. More broadly, USTA urges the Commission to implement the statute in a manner that recognizes the relationship of Section 251 to both the Commission's current regime of access charges and universal service. Ultimately, the 1996 Act contemplates a competitive endpoint where the pricing of local interconnection is not dependent on the identity of the interconnecting entity. The Commission's implementation of general Section 251 guidelines can aid that transition.

Specifically, USTA proposes the following:

Interconnection and Network Unbundling: Implementation of Sections 251(c)(2) and (3), which require interconnection between, and unbundling of, local networks at "technically feasible" points, should occur through broad and flexible guidelines instead of detailed prescriptions. The Commission should identify loop, port, transport, and signalling as a minimum set of mandatory elements to be unbundled and leave any further unbundling to negotiation. Interconnection and unbundling negotiations should be subject to a bona fide request rule that encourages prompt resolution of interconnection needs but screens out frivolous or unreasonable claims.

In prescribing its interconnection and unbundling guidelines the Commission should not equate "technically feasible" with theoretically possible. LECs should not be required to undertake unreasonable or costly steps to reconfigure their networks to accommodate unbundling and interconnection requests.

Pricing: Section 252(d)(1) of the 1996 Act assigns state commissions the task of determining just and reasonable rates for interconnection and unbundled network elements. The Commission's pricing rules must be general enough to preserve the states' role. The Commission should not therefore prescribe actual rates, but should at most articulate guidelines to ensure that rates are cost-based and nondiscriminatory. The Commission should be guided here by several principles.

(i) The Commission's definition of "cost" must allow LECs to recover the full costs of their networks. Such costs include incremental, joint, and common costs, and should reflect the unrecovered embedded costs of incumbent networks, not just forward-looking costs. Failure to permit recovery of these costs will lead to inefficient investment and consumption incentives and be contrary to the Act's purpose of encouraging facilities-based competition. In particular, there is no economic basis for a rule constraining interconnection rates to the forward-looking costs of an optimal network. LECs must be permitted to recover the reasonable total costs of existing networks. Prices set at purely incremental costs, e.g. LRIC or TSLRIC, will be confiscatory and lead to productive inefficiency.

(ii) Rate proxies based on access charges may establish presumptively valid rates for transport and termination of traffic under Section 252(d)(2) and for some unbundled elements under Section 252(d)(1). Until access reform is completed, however, interexchange carriers must not be permitted to avoid the access-charge regime by reconstructing access through unbundled elements and thereby avoiding the CCLC and RIC. To avoid such arbitrage, the Commission should either include CCLC and RIC in rates paid by new entrants or rigidly separate interexchange access from unbundled network elements.

(iii) The Act's avoided-cost rule for resale will lead to efficient wholesale prices. The required discount should be net avoided costs, however, so that wholesale prices efficiently reflect

the full cost of providing services for resale. Wholesale pricing should apply only to services in the form in which they are sold at retail to avoid arbitrage around the unbundled element and interconnection provisions of the Act. Services whose retail prices are below cost should not be subject to wholesale pricing, at least absent pass-through of the universal service contribution to the LEC bearing those costs.

(iv) Reciprocal arrangements for transport and termination of traffic must, under Section 252(d)(2), permit carriers to recover their costs. Nothing in the Act bars reciprocal compensation from covering the full costs of transport and termination, and considerations of confiscation and productive efficiency require that it be permitted to do so. Bill-and-keep arrangements are, absent voluntary waiver by the parties, flatly inconsistent with the Act.

Exemptions, Suspensions, Modifications: Section 251(f) recognizes that rural LECs and LECs with less than two percent of the nation's subscriber lines may be unable to meet the rigorous interconnection requirements established for larger LECs. The Commission should provide general guidelines to the States concerning implementation of these important provisions so that undue economic and technical burdens are not imposed on small and mid-size LECs.

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**I. INTRODUCTION**

New Section 251 of the Communications Act sets forth the interconnection obligations of all telecommunications carriers, including new and incumbent local exchange carriers ("LECs"). The provision is the centerpiece of the "pro-competitive, de-regulatory, national policy framework" set up by Congress in the Telecommunications Act of 1996 ("1996 Act").<sup>1</sup>

USTA below offers its comments on the key interpretive issues raised in the NPRM with respect to the Commission's proposed implementation of Section 251. As a threshold matter, however, USTA urges the Commission to adopt two overarching principles as it proceeds under its statutory mandate to effectuate the Act.

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<sup>1</sup>Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); Joint Explanatory Statement at 1. The Telecommunications Act of 1996 with Joint Explanatory Statement is printed in S. Conf. Rep. No. 230, 104th Cong. 2d Sess. (1996). It is reprinted with revisions at House Committee on Commerce, 104th Cong. 2d Sess., Communications Act of 1934 as Amended by the Telecommunications Act of 1996 (Comm. Print 1996).

First, a fundamental policy goal of the 1996 Act is to promote the development of competition in all segments of the telecommunications industry. In particular, Sections 251 to 253 focus on fostering facilities-based competition in the local exchange market.<sup>2</sup> Section 251 helps to achieve this goal by providing the means for new entrants to interconnect their competing local exchange networks with those of new and incumbent LECs.<sup>3</sup>

USTA believes that the Congressional goal of promoting facilities-based competition is vital to clarifying the scope and content of Section 251. The long distance industry has mobilized in recent months to claim that Section 251's interconnection and unbundled access provisions are mandated replacements for the Commission's interstate access charge regime, and that the IXC's are free to piece together various network elements, priced at incremental cost, to provide end-to-end telecommunication services without regard to either the language or policy of Section 251. See infra p. 59. Contrary to the vision of the statute, the IXC's

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<sup>2</sup>Similarly, in the interexchange market, the Act removes legal barriers to facilities-based competition by the Bell Operating Companies ("BOCs") with IXC incumbents as soon as the BOCs have shown that they have opened their local networks to competitors.

<sup>3</sup>See, e.g., 142 Cong. Rec. H1149 (daily ed. Feb. 1, 1996) (statement of Rep. Fields) (observing that "we came up with the concept of a facilities based competitor who was intended to negotiate the loop for all within a State"); 142 Cong Rec. H8284 (daily ed. Aug. 2, 1995) (statement of Rep. Fields) (observing that "central to competition to the consumer in this legislation is the opening of the local telephone network. We do this with a short rulemaking by the FCC, the telephone companies having to enter a good faith negotiation with a facilities-based competitor . . . on how the network is open"); see also 1996 Act § 271.

would then have every incentive not to proceed with the build-out of their own competitive local exchange facilities. Moreover, like incumbent LECs, emerging competitive facilities-based providers of local exchange and exchange access service also must seek to recover the total costs of their joint-use networks. These providers cannot compete on equal terms if AT&T or MCI are able to piece together services at incremental cost using only incumbent LEC facilities. Thus, any interpretation of Section 251 that does not recognize the goal of facilities-based competition runs the risk of undercutting the very purpose of the 1996 Act.

A second, broader consideration is the relationship of this proceeding to both the Commission's current regime of access charges and universal service. Contrary to the claims of the long distance carriers, the 1996 Act neither mandates access charge reform nor permits the IXC's to bypass the Commission's current access charge regime through the purchase of unbundled rate elements. Nevertheless, the policy relationship among Sections 251 and 252, universal service and access charges is strong and undeniable. Ultimately, the 1996 Act contemplates a competitive endpoint where the pricing of local interconnection is not dependent on the identity of the interconnecting entity, e.g. an IXC, a CAP, a CLEC, a CMRS provider or even an information service provider. The Act envisions a telecommunications marketplace with full and fair competition among providers and affordable rates for consumers. Regulatory constructs, such as the carrier common line charge ("CCLC") and the residual interconnection charge ("RIC"),

should be restructured,<sup>4</sup> and any subsidies should be narrowly targeted and explicit in terms of the universal service goals that they are designed to foster.

The implementation of Section 251 is a vital component of the transition to full and open local competition. As LECs, interconnecting carriers and State public service commissions begin to determine pricing and other rules to promote local facilities-based competition, any broad national guidelines adopted by the Commission should: (1) recognize the interrelationship of local interconnection, access charges and universal service; (2) be administratively simple and capable of effectuation; and (3) accommodate the transition to full competition.

USTA believes that the Commission should not (and legally cannot) get into the business of setting specific prices under the new Act. USTA believes that, at most, the Commission should adopt

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<sup>4</sup>The CCLC is a per minute charge assessed to IXCs to help cover interstate common line costs. As the Commission has acknowledged, CCLC payments represent subsidies to the degree that customers' lines with the most traffic recover more than the interstate portion of their subscriber line costs, while customers' lines with the least traffic recover less than the interstate allocation of the cost of those lines. The CCLC has a number of recognized drawbacks, including inefficiency losses, and the fact that unnecessarily high CCLC rates may cause incumbent LECs to lose their public network customers with the highest levels of traffic to alternative providers not burdened with these costs. See Common Carrier Bureau, Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms at 8 (Feb. 23, 1996). The RIC is a residual amount calculated to provide LECs initially with the same level of transport revenues under the Commission's interim transport rate structure as they would have received under prior rules. The RIC has been criticized because some costs included in the charge reflect subsidies to other interstate access service segments, which affects the competitiveness of other markets for these services. See id. at 9.

general guidelines for price floor and price ceilings.<sup>5</sup> Alternatively, the Commission could adopt an administratively workable, simple, proxy-based set of federal guidelines that would establish presumptively reasonable charges for interconnection and unbundling charges. But carriers must still be free to depart from such guidelines based on individual circumstances.

Set forth below is a section by section response to the questions posed in the NPRM.

## **II. PROVISIONS OF SECTION 251**

### **A. Scope of the Commission's Regulations**

In enacting Section 251, Congress sought to create a "new model" for interconnection<sup>6</sup> -- one that, for incumbent LECs, relies in the first instance on voluntary negotiation and agreement between and among carriers with respect to interconnection matters, subject to certain duties and obligations set forth in the statute with which the parties must comply. The 1996 Act reflects a legal and policy judgment that, to the extent that such carrier-to-carrier interconnection negotiations break down, review is a matter reserved first to State public service commissions with recourse to the federal district courts. See 1996 Act § 252.

The NPRM seeks comment on the extent to which the Commission's rules should "elaborate on the meaning of the statutory

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<sup>5</sup>Parties would, of course, be free to negotiate above or below this range.

<sup>6</sup>Joint Explanatory Statement at 121.

requirements set forth in sections 251 and 252."<sup>7</sup> The Commission has tentatively concluded that it should adopt "explicit national rules" on virtually every aspect of interconnection covered in Section 251.<sup>8</sup>

In USTA's view, the Commission has a vital role to play in the Section 251 implementation process, and agrees that certain broad guidelines are appropriate with respect to the implementation of certain portions of the statute. However, many of the Commission's proposals are far more interventionist in the Section 251/252 negotiation process than either Congress intended or than is advisable as a matter of telecommunications policy. The 1996 Act is built on a structure of private party negotiation. USTA urges the Commission not to implement the statute in a manner that overly restricts the behavior of the parties in reaching mutually beneficial interconnection agreements.<sup>9</sup>

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<sup>7</sup>Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC No. 96-182, ¶ 27 (released Apr. 19, 1996) ("NPRM").

<sup>8</sup>See id. ¶¶ 26-32.

<sup>9</sup>USTA believes that the Commission's suggestion that incumbent LECs have "vastly superior bargaining power" in negotiations with emerging local exchange competitors, see NPRM at ¶ 8 n.19, is greatly overstated. The 1996 Act provides built-in incentives for RBOCs to negotiate interconnection arrangements that promote the emergence of facilities-based competition, since this is a statutory prerequisite for their entry into the interLATA services market. More dramatically, non-RBOC incumbent LECs, many of whom may be smaller or rural carriers, may lack bargaining power relative to the large IXC's, cable companies and competitive access providers -- sophisticated telecommunications players all -- with whom they will be negotiating interconnection arrangements. In the final analysis, parties to interconnection agreements simply have better information about a transaction and

The Commission also should not unduly constrain the role of the states, either in arbitrating interconnection agreements or in experimenting with different interconnection approaches. See NPRM ¶¶ 33, 51. To date, the states collectively have been the main crucible of policy experimentation and activity both in addressing interconnection approaches and in opening local markets to competition. This process is new and still unfolding, and as the NPRM suggests (¶ 33), there is not yet a sufficient body of evidence as to what interconnection approaches will best promote competition, nor is there any mandate in the Act for the Commission to develop such a uniform policy. What "works" for New York does not necessarily work for Nevada. While appropriate general guidelines could help guide the process,<sup>10</sup> overly detailed and all-encompassing rules will radically reduce states' ability to experiment with different pro-competitive regimes, and to exercise

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their respective needs than regulators, and the Commission should be extremely wary about intervening in the negotiation process based on potentially skewed predictions of party "bargaining power." See generally Pablo B. Spiller, A Contract Test Approach for Negotiated Interconnection (Apr. 15, 1996).

<sup>10</sup>Aside from the legal propriety of the Commission's actions, considered as a general policy proposition, USTA believes that the Commission's concern and emphasis in the NPRM on the need for federally-imposed uniformity across state regimes is largely unwarranted. Parties will have powerful incentives to achieve generally uniform interconnection and unbundling arrangements. To the extent there is variation across state regimes, it will most likely reflect the unique policy concerns that the states face in particular jurisdictions. And as mentioned, it is not in the public interest to overly constrain the experimentation and activity with respect to interconnection and unbundling that is now occurring in the states.

their responsibility over the large majority of costs attributable to intrastate services.

It is vital for all parties involved -- LECs, competitors, the Commission, the State PUCs and the courts -- to find the right way to harmonize their respective roles to make the Section 251/252 process work. Exigencies of time and good public policy point in the same direction: the Commission should adopt broad, flexible guidelines to govern interconnection matters, but should refrain from over-regulation. This proceeding cannot and should not be a repeat of the pace and detail of the Commission's video dialtone or cable rate regulation proceedings; neither the 1996 Act, time nor technology permit it.

**B. Obligations of Incumbent LECs**

**1. Negotiate in "Good Faith"**

USTA does not believe that the Commission needs to, or should, establish national standards for "good faith" negotiations. Any party dissatisfied with the pace or conditions of negotiations can immediately seek state mediation under Section 252(a)(2), and the states are fully equipped to deal with any concrete situations that may develop.<sup>11</sup>

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<sup>11</sup>In particular, the Commission should not bar non-disclosure agreements. Such agreements benefit both sides by ensuring that open discussion will not be hampered by fears that the other party will use confidential business information obtained in the course of negotiations to gain a competitive advantage. Nothing in the Telecommunications Act indicates that Congress intended to forbid this standard commercial practice.

## 2. Interconnection, Collocation, and Unbundled Elements

### a. Interconnection.

The obligation contemplated by Section 251(c)(2) governs interconnection for the transmission and routing of telephone exchange service and exchange access. The incumbent LEC must allow such interconnection at "any technically feasible point," the interconnection must be equal in quality to that which the incumbent LEC provides to itself or any other party, and it must be at rates that are non-discriminatory and that meet the requirements of Section 252. See 1996 Act § 251(c)(2)(A)-(D).

The NPRM first seeks comment on the relationship between the obligation of incumbent LECs to provide "interconnection" under Section 251(c)(2) and the obligation of all LECs generally to establish reciprocal compensation arrangements for the "transport and termination" of telecommunications under Section 251(b)(5).<sup>12</sup> The issue is significant since these obligations each have different pricing standards under Section 252(d)(2). NPRM ¶ 53.

USTA believes that there is no ambiguity as to the pricing standards set forth in Section 252(d)(2). As the NPRM recognizes, the plain meaning of the term "interconnection" should be adopted. The use of the terms "facilities" and "equipment" in

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<sup>12</sup>In virtually all Sections of the NPRM, the Commission asks parties to comment on the legality and wisdom of creating "uniform national rules" to govern every aspect of Section 251's implementation and operation. While USTA addresses this issue in various sections below, USTA's overall position on this issue is set forth in Section II.A. above. If the parties are not given sufficient freedom to negotiate due to overly detailed "national standards," the result will be both bad law and bad policy.

Section 251(c)(2) further supports the conclusion that the term "interconnection" in the statute refers only to the facilities and equipment physically linking two networks, and not to the transport and termination services provided by such linking. There is no statutory basis for a broadening of the term to include transport and termination services. Furthermore, from a policy standpoint, there is no useful purpose served by introducing ambiguity and overlap into the pricing standards that plainly apply to separate and distinct aspects of telecommunications service provision. See id. ¶ 54.

(1) Technically Feasible Points.

Section 251(c)(2)(B) requires incumbent LECs to provide interconnection "at any technically feasible point" within the incumbent LEC's network. The issue of "technically feasible" points of interconnection is one that seems to have troubled Congress, and neither the 1996 Act nor its legislative history provide much guidance with respect to how this requirement should be implemented. This observation alone is instructive and suggests that the Commission should not mandate by regulatory fiat a myriad of specific points of interconnection. It would also be unwise for the Commission to "freeze" technological points of interconnection by implementing a static set of detailed regulations when the development of networks is a dynamic and constantly evolving process.<sup>13</sup> In general, determinations of technically feasible

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<sup>13</sup>For example, today, points of interface ("POIs") are usually end offices or access tandems. Mid-span POIs will be difficult to accommodate in a SONET environment. In the future,

points of interconnection are best fleshed out by the parties directly in interconnection negotiations.

USTA does believe, however, that it is appropriate for the Commission to offer broad guidelines to the states with respect to technical feasibility determinations. At the outset, the Commission should clarify that "technically feasible," as the plain language of the term suggests, does not mean "technically imaginable" or "technically possible." The 1996 Act requires incumbent LECs to interconnect or unbundle their networks as those networks are currently configured to meet the incumbent carrier's business needs.<sup>14</sup> The requirement of technical feasibility does not mean that LECs must take risky or unreasonable steps to construct new facilities or reconfigure their networks in response to competitor requests. Any request for or identification of technically feasible points of interconnection must include cost considerations -- an interpretation that is perfectly consistent with the legislative history of Section 251<sup>15</sup>, as well as with

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SONET architecture should adapt to address such problems. Given the rapid evolution in network development and design, it makes little sense for the Commission to mandate points of interconnection that may rapidly become obsolete and actively hinder future adaptation to market and customer demand.

<sup>14</sup>Incumbent LEC interconnection and unbundling requirements are clearly limited to "inventory" on hand. The 1996 Act does not impose an obligation upon incumbent LECs to construct facilities to satisfy the requests of a would-be competitor for interconnection or unbundled network elements.

<sup>15</sup>See Joint Explanatory Statement at 118 (summarizing Senate bill statement, uncontradicted by the Conference Report, that negotiation process established by Section 251 "is intended to resolve questions of economic reasonableness with respect to the interconnection requirements").

previous Commission constructions of "technical feasibility." In the Commission's 900 Service order, for example, the Commission stated: "In defining 'technically feasible,' we balance both technical and economic considerations with a view toward providing blocking capability to consumers without imposing undue economic burdens on the LECs."<sup>16</sup>

With this usage of the term in mind, in response to the Commission's inquiry as to what constitutes a "technically feasible point" within an incumbent LEC's network for purposes of Section 251(c)(2)(B) (NPRM ¶ 56), USTA recommends that the following criteria be adopted:

- (1) The point of interconnection is defined by an interface that can be disclosed, ordered, provisioned, maintained and billed for without unique or special handling.
- (2) The point of interconnection affords non-discriminatory access that can be managed without undermining network reliability, increasing the risks of physical damage, service impairment, service degradation, or service outage, or creating a hazard to customers or operating personnel.
- (3) The point of interconnection can be achieved in a manner that is consistent with applicable industry standards and protocols for equipment intended for the specific environment in which it is located (e.g., Central Office, Outside Plant, etc.), consistent with the standards the incumbent LEC applies to itself.

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<sup>16</sup>Report and Order, Policies and Rules Concerning Interstate 900 Telecommunications Services, 6 FCC Rcd 6166, 6174 (1991); see also Report and Order, Revision of Rules and Policies for the Direct Broadcast Satellite Service, IB Docket No. 95-168, PP Docket No. 93-253, FCC No. 95-507, ¶ 128 (released Dec. 15, 1995) (definition of "technical feasibility" encompasses demonstration that service "while technically feasible . . . would require so many compromises in satellite design and operation as to make it economically unreasonable").

- (4) Physical and/or logical interconnection points must meet the service and security needs of interconnectors, the incumbent LEC network, and the public.

These criteria are flexible enough that they can be usefully applied even as technology evolves.<sup>17</sup> Moreover, this standard accommodates variation among companies with respect to network size and complexity; interconnection that is "technically feasible" for a large incumbent LEC may not be feasible for smaller carriers.

With respect to process issues, the Commission has tentatively concluded that, to the extent determinations of technically feasible points take into account risks to network reliability, the burden should be on the party alleging harm to the network to present detailed information to support such a claim. NPRM ¶ 56. USTA agrees with this conclusion, but believes that the justification and any requests for additional points of interconnection should issue within the context of a model procedure sanctioned by the Commission, i.e., a "bona fide request" ("BFR") process, that will facilitate interconnection negotiations.

A BFR process should be structured to encourage the prompt and efficient resolution of interconnection requests, while also

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<sup>17</sup>See id. The Commission has tentatively identified such potential technically feasible points of physical interconnection as the trunk and loop-side of the local switch, tandem facilities and signal transfer points. Id. at ¶ 57. USTA believes that these points are good examples of points that would qualify as "technically feasible" under its proposed criteria, and can be used as a baseline from which the parties can negotiate more detailed interconnection arrangements if desired.

weeding out frivolous or unreasonable claims.<sup>18</sup> Information exchanged during the process could then serve to provide a factual basis for state arbitrators in the event that a dispute between the parties arises, including disputes as to "technical feasibility." BFR guidelines could also help resolve issues that arise during the course of negotiations, including the identification of costs associated with processing requests. Thus, USTA recommends that any model BFR process created by the Commission have the following characteristics:

- (1) **An incumbent LEC's obligation to consider a request for interconnection should begin with the submission of a bona fide request.** At a minimum, the requesting party should identify: (a) the specific point(s) of interconnection sought; (b) any desired interface and other technical specifications; (c) the date when interconnection is desired; (d) the projected quantity of interconnection points ordered with a demand forecast; and (e) any desired changes in LEC operations or procedures.
- (2) **The process should discourage spurious interconnection or unbundling requests.** In order to achieve this goal, requestors should be required to include a commitment either to order the item(s) requested in the quantity requested, or to pay the incumbent LEC's costs of processing the request. In addition, arrangements offered by an incumbent LEC to the requestor should be made reciprocal, which as the NPRM observes, has facilitated

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<sup>18</sup>Thus, USTA agrees with the Commission that there should be certain guidelines built into the process that encourage the parties to negotiate in good faith. See NPRM at ¶ 47. USTA disagrees, however, with the Commission's general suggestion, based upon the claims of ALTS, that efforts by LEC incumbents to ensure the legitimacy of interconnection requests are inconsistent with the 1996 Act. See id. at ¶ 48 & n.63. To the extent that its guidelines address such issues, the Commission should ensure that both requestors and incumbents are protected in the negotiation process.

negotiations between incumbent LECs and their competitors in several states.<sup>19</sup>

- (3) **Incumbent LECs should be able to recover costs of any investment required or expenses incurred to provide the requested interconnection.** Requesting telecommunications carriers should be permitted to cancel BFRs at any time, but at a minimum should compensate the incumbent LEC for reasonable costs incurred through the date of cancellation.
- (4) **Incumbent LECs should promptly process BFRs.** Incumbent LECs should promptly advise requesting carriers of the need for additional information. Once necessary information is received, the incumbent should then promptly process and analyze the request, and notify the requesting carrier of the results within a specified time frame, e.g., 90 days. The analysis should include whether the request is technically feasible. If so, the incumbent LEC should proceed promptly to develop the requested services, determine their availability at the requested point, determine the applicable prices, and establish estimated installation intervals. Some more complicated requests may require joint testing or technical trials. To the extent that the request is not technically feasible, the incumbent LEC should notify the requesting carrier as soon as possible, and should promptly provide a written report setting forth a detailed basis for this conclusion.
- (5) **The process should provide a basis for reasoned judgment should either party elect arbitration.** If the parties have questions of good faith in interconnection negotiations, or have disputes over pricing issues or technical feasibility determinations, they may request mediation or arbitration from the applicable state agency. The process thus should provide for clearly documented requests and responses as set forth above.<sup>20</sup>

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<sup>19</sup>Several states "have found out that the negotiation process between incumbent LECs and their potential competitors may move more smoothly if the arrangements offered by an incumbent LEC are made reciprocal." *Id.* at ¶ 45.

<sup>20</sup>This BFR process would also be used to channel and negotiate requests for access to unbundled network elements under Section 251(c)(3). *See infra* pp. 26-28.

A BFR process, featuring the interplay between the technical staffs of incumbent LECs and emerging local exchange competitors, is the best way to ensure that interconnection and unbundling requests meet the technical and operational needs of both parties. Furthermore, such a process is entirely consistent with the 1996 Act's policy of encouraging the negotiation of inter-carrier agreements. See 1996 Act § 252(a).

Finally, the Commission has also tentatively stated that "a particular point will be considered technically feasible within the meaning of section 251(c)(2)" if (1) an incumbent LEC "currently provides, or has provided in the past, interconnection to any other carrier at that point," or (2) that another incumbent LEC employing "similar network technology" has made the point available to requesting carriers. NPRM ¶ 57. USTA believes that this proposed standard is problematic in several key respects and should not be adopted.

First, the fact that an incumbent LEC has provided interconnection at a particular point "in the past" does not necessarily mean that the interconnection point is or should be available today. Indeed, a "past" point of interconnection may well have been discontinued for efficiency reasons. The concept of "past points" as a minimum standard is inconsistent with the need for such a standard to accommodate the rapid expansion, redesign and innovation that is characteristic of telecommunications networks today.

In addition, the Commission introduces more ambiguity into the process by attempting to capture common points of interconnection among incumbent LECs using a standard of "similar network technology" -- a term that itself will require further definition.<sup>21</sup> In an implementation process that is already complex because of the need to resolve a number of fundamental definitional and interpretive issues, the Commission should not introduce new ones.<sup>22</sup>

(2) Just, Reasonable and Non-discriminatory.

Section 251(c)(2)(D) requires interconnection provided by incumbent LECs to be on rates,<sup>23</sup> terms and conditions that are "just, reasonable, and nondiscriminatory." The Commission seeks comment on how to determine whether the terms of interconnection agreements meet these criteria, and whether the Commission should adopt "explicit national standards" to set the terms and conditions for interconnection. NPRM ¶ 61.

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<sup>21</sup>For example, the term "similar network technology" should account for differences in LECs' equipment and operational support capabilities, including billing and cost support systems, which may preclude an easy transfer of an application. In accounting for these differences, a technically feasible interconnection point for one LEC simply may not be feasible for another.

<sup>22</sup>To the extent that the Commission defines a model BFR process that properly channels the parties' interconnection negotiations, the two main components the Commission has proposed to standardize -- i.e., the fact that a LEC incumbent has offered interconnection in the past, or the fact that other carriers offer an interconnection point using similarly designed networks -- still may be used as evidence by a requesting carrier of the legitimacy and feasibility of its requests.

<sup>23</sup>Pricing is discussed in Section II.B.2.d. below.